

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

922B0716

HOUSE ENGROSSED NO. **SB160** - 2/24/98

Introduced by: Senators Whiting and Halverson and Representatives Hagg and Duniphan

1 FOR AN ACT ENTITLED, An Act to revise and strengthen licensing qualifications, fees, and
2 penalties for bail bondspersons and runners.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 58-22-3 be amended to read as follows:

5 58-22-3. The following persons or classes ~~shall~~ may not be bail ~~bondsmen~~ bondspersons or
6 runners and ~~shall~~ may not directly or indirectly receive any benefits from the execution of any bail
7 bond: jailers, police officers, committing magistrates, magistrate court judges, sheriffs, deputy
8 sheriffs, and constables, any person having the power to arrest or having anything to do with the
9 control of federal, state, county, or municipal prisoners. Violation of this section is a ~~Class 2~~
10 ~~misdemeanor~~ Class 6 felony.

11 Section 2. That § 58-22-4 be amended to read as follows:

12 58-22-4. No person ~~shall~~ may act in the capacity of a bail ~~bondsman~~ bondsperson or runner
13 or perform any of the functions, duties, or powers prescribed for bail ~~bondsmen~~ bondsperson or
14 runners under the provisions of this chapter unless that person ~~shall be~~ is qualified and licensed
15 as provided in this chapter; ~~provided, however, that.~~ However, none of the provisions of this
16 section ~~shall~~ prohibit any individual person, from pledging real or other property as security for

1 a bail bond in judicial proceedings ~~and who if that person~~ does not receive, or is not promised,
2 money or other things of value therefor. ~~Violation of this section is a Class 2 misdemeanor~~
3 Acting in the capacity of a bail bondsperson or runner without being licensed is a Class 6 felony.
4 Receipt of money or other things of value by any person not acting in the capacity of a bail
5 bondsperson is a Class 2 misdemeanor.

6 Section 3. That § 58-22-5 be amended to read as follows:

7 58-22-5. No license ~~shall~~ may be issued except in compliance with this chapter and none ~~shall~~
8 may be issued except to an individual; ~~provided, however, that. However,~~ any person performing
9 the functions of a bail ~~bondsman~~ bondsperson or runner, within the definition of this chapter, on
10 July 1, 1966, ~~shall~~ is not be required to take an examination, but shall be issued a license upon
11 making the application ~~herein~~ required by this chapter, and renewals ~~thereof~~ shall be granted
12 subject to the provisions of §§ 58-22-6, 58-22-19, and 58-22-21; ~~provided, further, that the. The~~
13 provisions of this chapter ~~shall~~ do not apply to the holder of a valid all lines fire and casualty
14 agent's license held prior to July 1, 1998.

15 A firm, partnership, association, or corporation, as such ~~shall~~ need not be licensed.

16 Section 4. That § 58-22-6 be amended to read as follows:

17 58-22-6. The application for license, in addition to the other matters set out in §§ ~~58-22-5~~
18 ~~and 58-22-14~~ this chapter to serve as a bail ~~bondsman~~ must bondsperson shall affirmatively
19 show: ~~Applicant that the applicant~~ is a natural person who has reached the age of twenty-one
20 years; ~~is~~ is a citizen of the United States, ~~and~~ has been a bona fide resident of the state for ~~one~~ the
21 preceding year ~~last past~~, will actively engage in the bail bond business, and has ~~knowledge,~~
22 ~~experience or instruction in the bail bond business or has held a valid all lines fire and casualty~~
23 ~~agent's license for one year within the last five years; or has been employed by an insurer engaged~~
24 ~~in writing bail bonds in which field he has actively engaged for at least one year of the last five~~
25 ~~years; or was actively engaged in bail bond business on March 2, 1963~~ not been convicted of,

1 or pled guilty or nolo contendere to, a felony or a crime involving moral turpitude or any crime
2 involving moral turpitude. The director of the Division of Insurance may waive the restriction
3 relating to the conviction of, or plea of guilty or nolo contendere to, a felony if three years have
4 elapsed since the completion of the sentence imposed by the court in connection with the
5 violation.

6 Section 5. That § 58-22-7 be amended to read as follows:

7 58-22-7. A license fee of ~~ten~~ thirty dollars shall be submitted to the director with each
8 application for license as bail ~~bondsman~~ bondsperson.

9 ~~Applicant~~ The applicant shall also furnish with ~~his~~ the application, a complete set of ~~his~~ the
10 applicant's fingerprints and a recent credential-size full face photograph of ~~himself~~ the applicant.
11 The applicant's fingerprints shall be certified by an authorized law enforcement officer.

12 Section 6. That § 58-22-8 be amended to read as follows:

13 58-22-8. Every insurer shall annually, prior to May first, furnish the director a list of all
14 surety ~~bondsmen~~ bondsperson appointed by it to write bail bonds on its behalf accompanied by
15 a renewal fee of ten dollars for each bondsperson being reappointed. Every such insurer who
16 subsequently appoints a surety ~~bondsman~~ bondsperson in the state; shall give notice ~~thereof~~ to
17 the director along with a written application for license for ~~said bondsman~~ bondspersons
18 accompanied by a ten dollar appointment fee. All such appointments ~~shall be~~ are subject to the
19 issuance of a license to such surety ~~bondsman~~ bondsperson.

20 Section 7. That § 58-22-12 be amended to read as follows:

21 58-22-12. In addition to the other requirements prescribed in §§ ~~58-22-5 and 58-22-14~~ this
22 chapter, an applicant for a license to serve as a runner ~~must~~ shall affirmatively show:

- 23 (1) That the applicant is a natural person who has reached the age of twenty-one years;
24 (2) That the applicant is a citizen of the United States and has been a bona fide resident
25 of this state for more than ~~six months~~ one year last past;

(3) That ~~the applicant will be employed by only one bail bondsman, who will supervise the work of the applicant, and be responsible for the runner's conduct in the bail bond business; and~~

~~(4) The application must be endorsed by the each appointing bail bondsman, who shall obligate himself~~ bondsperson is obligated to supervise the ~~runner's~~ applicant's activities ~~in his behalf,~~ and be responsible for the applicant's conduct in the bail bond business; and

(4) That the applicant has not been convicted of, nor has pled guilty or nolo contendere to, a felony or of any crime involving moral turpitude. The director of the Division of Insurance may waive the restriction relating to the conviction of, or plea of guilty or nolo contendere to, a felony or a crime involving moral turpitude if three years have elapsed since completion of the sentence imposed by the court in connection with the violation.

Section 8. That chapter 58-22 be amended by adding thereto a NEW SECTION to read as follows:

The application for ~~the~~ a runner's license shall be accompanied by a written appointment of the applicant as a runner by each licensed bail bondsperson employing the applicant.

Section 9. That § 58-22-13 be amended to read as follows:

58-22-13. ~~A~~ Each runner's application shall be accompanied by a license fee of ten thirty dollars and an appointment fee of ten dollars for each bail bondsperson employing the applicant and shall be submitted to the director with each application for a license to serve as a runner, together with fingerprints and photograph. The employing bail bondsperson is responsible for submitting the application and appointment fee.

Section 10. That § 58-22-14 be amended to read as follows:

58-22-14. The applicant for any license under this chapter shall apply in writing, on forms

1 prepared and supplied by the director, and the director may propound any reasonable
2 interrogatories to an applicant for a license under this chapter or on any renewal thereof, relating
3 to ~~his~~ the applicant's qualifications, residence, prospective place of business, and any other
4 matters which, in the opinion of the director, are deemed necessary or expedient in order to
5 protect the public and ascertain the qualifications of the applicant. The director may also conduct
6 any reasonable inquiry or investigation ~~he~~ the director sees fit, relative to the determination of
7 the applicant's fitness to be licensed or to continue to be licensed including a criminal background
8 check, and the applicant is responsible for any costs associated with a criminal background check
9 as charged by the appropriate agency conducting and furnishing the background check. The
10 applicant shall provide any necessary authorization requested by the director to facilitate an
11 inquiry or investigation.

12 Section 11. That chapter 58-22 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 Any person holding a license under this chapter shall notify the Division of Insurance of a
15 conviction or plea of guilty or nolo contendere to a felony or a crime of moral turpitude within
16 twenty days of the conviction or plea. Violation of this section is a Class 1 misdemeanor.

17 Section 12. That § 58-22-20 be amended to read as follows:

18 58-22-20. A renewal license shall be issued by the director to a licensee who has
19 continuously maintained ~~same~~ a license in effect without further examination, unless deemed
20 necessary by the director, ~~upon the payment of a renewal fee of ten dollars,~~ but such license ~~shall~~
21 is in all other respects ~~be~~ required to comply with and be subject to the provisions of this chapter.
22 After the receipt of such licensee's application for renewal the current license shall continue in
23 effect until the renewal license is issued or denied for cause.

24 Section 13. That § 58-22-21 be amended to read as follows:

25 58-22-21. The director may deny, suspend, revoke, or refuse to renew any license issued

under this chapter for any of the following causes:

- (1) For any cause for which issuance of the license could have been refused had it then existed and been known to the director;
- (2) Violation of any laws of this state to bail in the course of dealings under the license issued ~~him~~ the licensee by the director;
- (3) Material omission, misstatement, misrepresentation, or fraud in obtaining the license;
- (4) Misappropriation, conversion, or unlawful withholding of moneys, belonging to insurers or others and received in the conduct of business under the license;
- (5) Conviction of, or a plea of guilty or nolo contendere to, a felony or any crime involving moral turpitude;
- (6) Fraudulent or dishonest practices in the conduct of business under the license;
- (7) Willful failure to comply with, or willful violation of any proper order, rule, or regulation of the director, or the provisions of this chapter;
- (8) ~~When~~ If, in the judgment of the director, the licensee has, in the conduct of affairs under the license, demonstrated incompetency, or untrustworthiness, or conduct or practices rendering ~~him~~ the licensee unfit to carry on the bail bond business or making ~~his~~ the licensee's continuance in such business detrimental to the public interest, or that ~~he~~ the licensee is no longer in good faith carrying on the bail bond business, or that ~~he~~ the licensee is guilty of rebating, or offering to rebate, or unlawfully dividing, or offering to divide ~~his~~ such licensee's premiums in the case of professional ~~bondsmen~~ bondsperson, and for such reasons is found by the director to be a source of detriment, injury, or loss to the public.

Section 14. That § 58-22-24 be amended to read as follows:

58-22-24. Professional ~~bondsmen~~ bondspersons shall, before writing cash or security bail bonds, deposit with the director in the same manner as required of domestic insurers, an amount

determined by the director of not less than ten thousand dollars and an amount necessary to cover forfeitures as required to be filed with the director annually. Such deposit ~~shall be~~ is subject to all laws, rules, and regulations concerning deposits by domestic insurers. The director may waive the deposit requirement contained in this section for a person authorized pursuant to § 58-22-37 to countersign for a bail ~~bondsman~~ bondsperson.

Section 15. That § 58-22-25 be amended to read as follows:

58-22-25. No bail ~~bondsman~~ bondsperson may become a surety on an undertaking unless ~~he~~ the bail bondsperson has registered ~~his license~~ in the office of the sheriff in the county in which the ~~bondsman~~ bondsperson resides ~~and he~~. The bail bondsperson may then become ~~such~~ a surety in any other county upon presenting to the official required to approve the sufficiency of bail, a certificate of such registration. A surety ~~bondsman~~ bondsperson shall also file a certified copy of ~~his~~ appointment by power of attorney from each insurer which ~~he~~ the bail bondsperson represents as agent with the sheriff. Registration and filing of certified copy of renewed power of attorney shall be performed annually on October first. ~~The sheriff shall not permit the registration of a bail bondsman unless such bondsman is currently licensed by the director.~~ Violation of this section is a Class 2 misdemeanor. No bail bondsperson may register with the sheriff unless such bail bondsperson is currently licensed with the director. Any violation of this section is a Class 1 misdemeanor.

Section 16. That chapter 58-22 be amended by adding thereto a NEW SECTION to read as follows:

Any out-of-state bail bondsperson or runner entering this state shall notify all local law enforcement agencies in the area where the bail bondsperson or runner intends to conduct bail bondspersons or runner activities, including, at a minimum, the office of the county's, sheriff's, and also, if operating within a municipality, the office of the municipal police as to presence and intended activity and present evidence of out-of-state licensure. No out-of-state bail bondsperson

or runner who is unlicensed in their state of domicile may conduct any bail bondsperson's or runner activities in this state. Violation of this section is a Class 6 felony.

Section 17. That § 58-22-26 be amended to read as follows:

58-22-26. Any bail ~~bondsman~~ bondsperson who discontinues writing bail bonds during the period for which ~~he is~~ licensed shall notify the sheriffs with whom ~~he is~~ registered and return ~~his~~ the license to the director for cancellation within thirty days ~~for~~ from such discontinuance.

Section 18. That § 58-22-27 be amended to read as follows:

58-22-27. Every person duly licensed as a bail ~~bondsman~~ bondsperson may appoint as a runner any person who holds or has qualified for a runner's license. ~~Each bail bondsman must, on or before May first of each year, furnish to the director a list of all runners appointed by him. Each such bail bondsman who shall, subsequent to the filing of this list, appoint additional persons as runners shall file written notice with the director of such appointment. Each bail bondsperson appointing a runner in this state shall file with, and obtain approval from the director for each appointment which shall be in a format prescribed by the director, and pay a fee of ten dollars. The appointment is effective upon the date it is processed by the Division of Insurance. The director may deny an appointment for reasons of protection of the public health, welfare, or safety, including the following:~~

- (1) The runner to be appointed is not properly licensed;
- (2) An investigation or administrative action concerning the runner or bail bondsperson by the Division of Insurance is eminent or on-going;
- (3) Material omission, misstatement, misrepresentation, or fraud in applying for the appointment; or
- (4) Conviction of, or a plea of guilty or nolo contendere to, a felony or any crime involving moral turpitude.

The director shall give written notice to the bail bondsperson of approval, denial, or delay

1 of a runner's appointment within thirty days of the bail bondsperson filing the appointment and
2 shall send a copy of the notice to the runner.

3 Section 19. That chapter 58-22 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Each bail bondsperson shall, on or before May first of each year, furnish to the director a list
6 of all runners appointed, accompanied by a ten dollar reappointment fee for each runner. Each
7 bail bondsperson who, subsequent to the filing of this list, appoints additional persons as runners
8 shall comply with the requirements of this section.

9 Section 20. That § 58-22-29 be amended to read as follows:

10 58-22-29. No bail ~~bondsman~~ bondsperson or runner ~~shall~~ may pay a fee or rebate or give or
11 promise anything of value to the principal or ~~anyone in his behalf~~ an agent of the principal.
12 Violation of this section is a ~~Class 2~~ Class 1 misdemeanor.

13 Section 21. That § 58-22-30 be amended to read as follows:

14 58-22-30. No bail ~~bondsman~~ bondsperson or runner ~~shall~~ may accept anything of value from
15 a principal except the premium, ~~provided that. However,~~ the ~~bondsman~~ bondsperson ~~shall be permitted to~~
16 bondsperson may accept collateral security or other indemnity from the principal which shall be
17 returned upon final termination of liability on the bond. Such collateral security or other
18 indemnity required by the ~~bondsman~~ bondsperson ~~must~~ shall be reasonable in relation to the
19 amount of the bond. Violation of this section is a ~~Class 2~~ Class 1 misdemeanor.

20 Section 22. That § 58-22-32 be amended to read as follows:

21 58-22-32. No bail ~~bondsman~~ bondsperson or runner ~~shall~~ may solicit business in or about any
22 place where prisoners are confined. Violation of this section is a ~~Class 2~~ Class 1 misdemeanor.

23 Section 23. That § 58-22-33 be amended to read as follows:

24 58-22-33. No bail ~~bondsman~~ bondsperson or runner ~~shall~~ may pay a fee or rebate or give or
25 promise anything of value to a jailer, ~~policeman~~ police, peace officer, committing magistrate, or

1 any other person who has power to arrest or hold in custody; or to any public official or public
2 employee in order to secure a settlement, compromise, remission, or reduction of the amount of
3 any bail bond or the forfeiture thereof. Violation of this section is a ~~Class 2 misdemeanor~~ Class
4 6 felony.

5 Section 24. That § 58-22-34 be amended to read as follows:

6 58-22-34. No bail ~~bondsman~~ bondsperson or runner ~~shall~~ may pay a fee or rebate or give
7 anything of value to an attorney in bail bond matters; except in defense of any action on a bond.
8 Violation of this section is a ~~Class 2 misdemeanor~~ Class 6 felony.

9 Section 25. That § 58-22-35 be amended to read as follows:

10 58-22-35. No bail ~~bondsman~~ bondsperson or runner ~~shall~~ may participate in the capacity of
11 an attorney at a trial or hearing of one on whose bond ~~he~~ such bail bondsperson or runner is
12 surety. Violation of this section is a ~~Class 2~~ Class 1 misdemeanor.

13 Section 26. That § 58-22-36 be amended to read as follows:

14 58-22-36. No bail ~~bondsman~~ bondsperson or runner ~~shall~~ may suggest or advise the
15 employment of or name for employment any particular attorney to represent ~~his~~ the
16 bondsperson's or runner's principal. Violation of this section is a Class 2 misdemeanor.

1 **BILL HISTORY**

2 1/21/98 First read in Senate and referred to Judiciary. S.J. 144

3 2/2/98 Scheduled for Committee hearing on this date.

4 2/2/98 Judiciary Do Pass, Passed, AYES 5, NAYS 0. S.J. 276

5 2/3/98 Senate Do Pass, Passed, AYES 33, NAYS 2. S.J. 309

6 2/4/98 First read in House and referred to Commerce. H.J. 391

7 2/17/98 Scheduled for Committee hearing on this date.

8 2/17/98 Commerce Do Pass, Passed, AYES 11, NAYS 0. H.J. 688

9 2/17/98 Commerce Place on Consent Calendar.

10 2/18/98 Second reading of consent calendar items.

11 2/18/98 Second reading of consent calendar items.

12 2/19/98 House of Representatives Deferred to another day. H.J. 786

13 2/20/98 House of Representatives Deferred to another day. H.J. 826

14 2/23/98 House of Representatives Deferred to another day. H.J. 862